

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
CALIFORNIA, ILLINOIS,
MINNESOTA, NEW MEXICO, and
VERMONT, and the DISTRICT OF
COLUMBIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE; UNITED
STATES DEPARTMENT OF
AGRICULTURE FOOD AND
NUTRITION SERVICE; and
SONNY PERDUE, in his official
capacity as Secretary of Agriculture,

Defendants.

19-CV-2956

Judge Andrew L. Carter, Jr.

**STIPULATION OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE
PURSUANT TO FED. R. CIV. P. 41(a)(1)(A)(ii)**

WHEREAS, in this action plaintiffs the States of New York, California, Illinois, Minnesota, New Mexico, Vermont and the District of Columbia (the “States”) challenge provisions in defendants’ (collectively, “USDA”) final rule, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*, 83 Fed. Reg. 63,775 (Dec. 12, 2018) (codified at 7 C.F.R. § 210.10; 7 C.F.R. § 220.8) (the “2018 Rule”) that eliminate the final sodium target, delay compliance with sodium target 2, and cut in half the whole grain requirement in the National School Lunch Program and School Breakfast Program;

WHEREAS, other plaintiffs brought a separate action (No. 19 Civ. 1004 (GJH)) in the U.S. District Court for the District of Maryland (the “Maryland District Court”) that also challenged the 2018 Rule and sought its vacatur;

WHEREAS, on April 13, 2020, the Maryland District Court issued a Memorandum Opinion and Order vacating the 2018 Rule and remanding to USDA for further proceedings consistent with the Maryland District Court’s opinion (the “Maryland District Court Decision”);

WHEREAS, on April 16, 2020, this Court, in an Opinion and Order, denied USDA’s motion to dismiss the States’ action for lack of subject matter jurisdiction, holding that the States had “alleged an injury in fact to their proprietary interests and thus, have established standing” (Dkt. 71, Op. at 19);

WHEREAS, USDA has determined that it will not pursue an appeal of the Maryland District Court Decision;

WHEREAS, the Maryland District Court Decision vacated the 2018 Rule, and such vacatur applies nationwide;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their respective counsels, that this action is voluntarily dismissed, without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and without interest, costs, expenses, disbursements, or fees to any party.

Dated: May 20, 2020

For Plaintiff State of New York:

LETITIA JAMES

Attorney General of the State of New York

By: /s/ Max Shterngel

Matthew Colangelo

Chief Counsel for Federal Initiatives

Monica Wagner

Deputy Chief, Environmental Protection Bureau

Samantha Liskow

Assistant Attorney General

Max Shterngel

Assistant Attorney General

Office of the New York State Attorney General

28 Liberty Street

New York, NY 10005

Phone: (212) 416-6692

Max.Shterngel@ag.ny.gov

For Plaintiff State of California:

XAVIER BECERRA

Attorney General of California

Michael L. Newman

Senior Assistant Attorney General

Sarah E. Belton

Supervising Deputy Attorney General

By: /s/ Julia Harumi Mass

Julia Harumi Mass (admitted *pro hac vice*)

Deputy Attorney General

Office of the California Attorney General

1515 Clay Street, Suite 2000

Oakland, CA 94612-1492

Phone: (510) 879-3300

Julia.Mass@doj.ca.gov

For Plaintiff District of Columbia:

KARL A. RACINE
Attorney General
District of Columbia

By: /s/ Sarah Kogel-Smucker
Kathleen Konopka
Deputy Attorney General
Sarah Kogel-Smucker
Special Assistant Attorney General
Office of the Attorney General for
the District of Columbia
441 4th Street, N.W., Suite 630 South
Washington, DC 20001
Phone: (202) 442-9727
sarah.kogel-smucker@dc.gov

For Plaintiff State of Illinois:

KWAME RAOUL
Attorney General of Illinois

By: /s/ Aaron Chait
Aaron Chait (admitted *pro hac vice*)
Assistant Attorney General
Office of the Illinois Attorney General
100 W. Randolph St., 11th Fl.
Chicago, Illinois 60601
Phone: (312) 814-3659
achait@atg.state.il.us

For Plaintiff State of Minnesota:

KEITH ELLISON
Attorney General
State of Minnesota

By: /s/ Christina Brown
Christina Brown*
Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
Phone: (651) 757-1471
christina.brown@ag.state.mn.us

For Plaintiff State of New Mexico:

HECTOR BALDERAS
Attorney General of New Mexico

By: /s/ Tania Maestas
Tania Maestas*
Deputy Attorney General
New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504
Phone: (505) 490-4849
tmaestas@nmag.gov

For Plaintiff State of Vermont:

THOMAS J. DONOVAN, JR.
Attorney General of Vermont

By: /s/ Jill Abrams
Jill Abrams
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street
Montpelier, VT 05609-1001
Phone: (802) 828-3186
jill.abrams@vermont.gov

*Not yet admitted to the Bar of this Court.

For Defendants:

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: 

Arastu K. Chaudhury
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2633
arastu.chaudhury@usdoj.gov